



March 18, 2021

**VIA ELECTRONIC FILING**

The Honorable Jocelyn G. Boyd  
Chief Clerk/Administrator  
**Public Service Commission of South Carolina**  
101 Executive Center Drive  
Columbia, South Carolina 29210

RE: Dominion Energy South Carolina, Incorporated's Establishment of a  
Solar Choice Metering Tariff Pursuant to S.C. Code Ann. Section 58-  
40-20 (See Docket No. 2019-182-E)  
Docket No. 2020-229-E

Dear Ms. Boyd:

Dominion Energy South Carolina, Inc. ("DESC" or "Company"), hereby replies to the response of the South Carolina Coastal Conservation League, Southern Alliance for Clean Energy, Upstate Forever, Solar Energy Industries Association, North Carolina Sustainable Energy Association, Alder Energy Systems, and Vote Solar (collectively, the "Subsidy Supporters") styled as "Letter Opposing DESC's Objection and Request to Strike Individuals from Public Witness List" filed with the Public Service Commission of South Carolina on March 15, 2021 ("Response").

The two questions before the Commission are simple and straightforward: (1) May solar entities and advocacy groups circumvent Commission rules and regulations—specifically Regulation 103-805(B)—and introduce evidence through the public testimony of their employees? and (2) May persons who are not customers of DESC present testimony or evidence in this proceeding at a hearing that the Commission clearly established and plainly noticed for DESC customers? DESC asserts that the law and past Commission practice clearly establish that the answer to both questions is no.

On the first question, it is important for the Commission to recognize the strategy being employed by the solar industry for this public hearing. In this case, the solar entities and advocacy groups with which certain planned witnesses are affiliated (including SunRun, a publicly traded company with a market capitalization of approximately \$11.5 billion as of March 17) freely chose to not participate in the proceeding. Rather than intervene in this proceeding and thereby subject themselves to discovery, responsive rebuttal testimony from the Company, and prepared cross-examination of their witnesses, SunRun and other solar entities and advocacy groups appear to have elected to have their employees (many of which are not DESC

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customers) make their case for them in a portion of the proceeding that the Commission has specifically reserved for DESC's customers. Having made this decision, these entities cannot now introduce evidence into the record on their behalf through the testimony of employees (regardless of whether they are a customer). Should the Commission permit such an end around of the proper procedure by allowing these employees to testify on behalf of their employers, it not only would vitiate the Revised Notice and other procedural protections afforded the Company and other parties, but it also would serve to encourage other companies to do the same in future proceedings.

Subsidy Supporters do not attempt to address DESC's legal argument that individuals may not represent entities before the Commission pursuant to Commission Regulation 103-805(B). Rather the Subsidy Supporters construct two strawmen that they can tear down. The first strawman is that DESC takes the position that "it is inappropriate for individuals with ties with the solar industry or other organizations to testify at the public hearing." DESC did not make such an argument. To the contrary, DESC states plainly that a customer with ties to the solar industry and other organizations can testify on his or her on behalf, but not on behalf of solar entities or advocacy groups with which the customer may be affiliated.<sup>1</sup>

The second strawman constructed by the Subsidy Supporters is that "there should not be a requirement that individuals [with ties to the solar industry or other organizations] retain counsel and formally intervene in the docket in order to express those concerns." Again, DESC does not argue that its customers must retain counsel to offer testimony to the Commission. Instead, DESC is requesting that the Commission enforce its regulation which states that individuals may not represent entities before the Commission, see Commission Regulation 103-805(B), and requests that the Commission "instruct the witness that he or she may only testify on his or her own behalf and not on behalf of any other entity with which he or she may be affiliated." Put plainly, it is the solar entities and advocacy groups with whom these individuals are affiliated that DESC maintains are required to hire an attorney. These solar entities and advocacy groups must follow the law and hire attorneys to represent them and make their case in proceedings before the Commission.

With respect to the second question, the Commission should not allow persons who are not customers of DESC to present testimony or evidence in this proceeding.

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<sup>1</sup> See DESC Objection and Request at 3 (stating "unless the witness is a DESC customer testifying on his or her own behalf, it is inappropriate to hear testimony from representatives of the solar industry . . . at the virtual public hearing" and (requesting that "the Commission require the individual to affirm under oath that the witness, in his or her individual capacity, is a DESC customer and, if the witness so affirms, instruct the witness that he or she may only testify on his or her own behalf and not on behalf of any other entity with which he or she may be affiliated") (emphasis added).

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Persons who are not customers of DESC would not have standing to participate in this proceeding as a party of record, see Commission Order No. 2010-221, and they should not be allowed to circumvent the standing requirement by presenting testimony and evidence in this portion of the proceeding that the Commission has clearly established for DESC's customers.

In its Response, the Subsidy Supporters concede that the Commission's Revised Notice of Virtual Public Hearing ("Revised Notice") was specifically addressed to "customers of [DESC]." In an attempt to negate their concession, however, the Subsidy Supporters claim that "[j]ust because DESC has not identified a customer's name in its billing system, there should not be a presumption that the individual is not a DESC customer," by incorrectly asserting that "a person can be a customer of DESC's electric utility even if that person's name is not on the account." This argument is misplaced because it ignores the fact that unless an individual is listed on the account as either the account holder or an authorized person to transact business regarding the account (such as a spouse or roommate), the Company has no relationship whatsoever with that individual.

The Subsidy Supporters attempt to advance their argument further by presenting a hypothetical to the Commission. They claim that their hypothetical "individual who '[is] not . . . a customer at this time [but who] may nevertheless have a reasonable expectation of being a DESC customer in the future'" should be allowed to testify in this proceeding that they admit was noticed for DESC customers. The effect of this argument would mean anyone in the world who might possibly take service from DESC at any point in the future would be allowed to testify in this proceeding.

Notably, the Subsidy Supporters do not identify any individuals who satisfy their greatly expanded criteria for who qualifies as a "customer" among the witness names objected to by DESC. Their inability to do so likely explains their reliance on their argument that "[any and all] South Carolinians who wish to provide their input" in the pending matter should be allowed to testify and provide evidence in a hearing that the Commission has specifically stated is for DESC customers. Of course, if the Commission adopts this position, then it would swing the doors wide open for non-customers to provide sworn testimony and evidence in any other proceeding in which a public hearing is held and allow non-customers to avoid possessing the requisite of standing before participating in a proceeding.

In sum, it is indisputable that the hearing on March 23, 2021, is for DESC's actual customers – not for the solar industry to surreptitiously relitigate its case through non-customer public witnesses or through customers affiliated with solar entities and advocacy groups testifying on their behalf. Solar entities and advocacy groups had ample opportunity to intervene and chose not to do so. Their interests

were adequately represented before the Commission by the Subsidy Supporters, and DESC's request is in no way inconsistent with Act 62.

Based on the foregoing, DESC respectfully requests that the Commission strike the individuals identified in the Company's March 10 filing from the witness list prior to the hearing unless they are willing to affirm under oath that they are a DESC customer and that the Commission instruct each witness that he or she may only testify on his or her own behalf and not on behalf of any other entity with which he or she may be affiliated.

By copy of this letter, we are providing counsel for the South Carolina Office of Regulatory Staff and the other parties of record a copy of DESC's reply.

Very truly yours,



Matthew W. Gissendanner

MWG/kms

cc: Parties of Record in Docket No. 2020-229-E  
(all via electronic mail only)